

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE:

MACHNE MENACHEM, INC.

Debtor

CASE NO. 3:07-CV-00057

(JUDGE CAPUTO)

**MEMORANDUM ORDER**

Presently before the Court is Machne Menachem, Inc.'s ("Debtor") Renewed Emergency Motion for Stay Pending Appeal (Doc. 10-1). Debtor seeks a stay of the order of the United States Bankruptcy Judge John J. Thomas confirming Yaakov Spritzer's Modified Second Amended Plan.

Rule 8005 of the Federal Rules of Bankruptcy Procedure permits a party to seek a stay pending appeal of an order of the bankruptcy court. See FED. R. BANKR. P. 8005. The bankruptcy court may grant such a stay when the party seeking the stay can show that: (1) it has a likelihood of success on the merits of the appeal; (2) it will be subject to irreparable harm if the stay is not granted; (3) the granting of the stay will not substantially harm other interested parties; and (4) the granting of the stay would serve the public interest. See *In re Edwards*, 228 B.R. 573, 575 (E.D. Pa. 1999). The decision of whether to grant or deny a stay pending an appeal is committed to the sound discretion of the bankruptcy court. *In re Blackwell*, 162 B.R. 117, 119 (E.D. Pa. 1993). "Discretion will be found to have been abused when the judicial action is arbitrary, fanciful or unreasonable which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court." *Id.*

Here, whether the Court grants Debtor's motion for a stay pending appeal turns on whether the bankruptcy court abused its discretion in denying Debtor's motion. However, the Court cannot determine at this time whether the bankruptcy court has abused its discretion because the bankruptcy court made its ruling from the bench and a transcript or audio recording of the hearing has not yet been made available to the Court.

Therefore, **IT IS HEREBY ORDERED** that the Order of United States Bankruptcy Judge John J. Thomas, confirming Yaakov Spritzer's Modified Second Amended Plan, is **STAYED** pending: (1) receipt of the transcript or audio recording of Judge Thomas' ruling; and (2) a hearing, hereby scheduled for Thursday, January 18, 2007 at 9:00 a.m., as to the issue of whether the bankruptcy court abused its discretion in denying Debtor's motion for a stay pending appeal.

January 16, 2007  
Date

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge